

ASSEMBLY BILL

No. 662

Introduced by Assembly Member La Suer

February 17, 2005

An act to add Title 8 (commencing with Section 945.6) to Part 2 of Division 2 of the Civil Code, and to add Section 337.17 to the Code of Civil Procedure, relating to construction defects, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 662, as introduced, La Suer. Construction defects: County of San Diego: fires.

(1) Existing law specifies the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.

This bill would provide a specified prelitigation procedure with regard to the free rebuilding of residential homes destroyed in the Cedar Fire of October 2003, in the County of San Diego, and any construction defects therefor.

(2) Existing law provides a 4-year and a 10-year statute of limitation with regard to patent or latent defect actions, as specified.

This bill would provide a 4-year statute of limitation with regard to building deficiencies in the rebuilt homes described above.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) California has a statewide housing crisis.

(b) Nationally, nine of the 10 least affordable housing markets are in California.

(c) Evidence indicates that there is increasing difficulty to obtain adequate insurance for the construction of single-family homes, as well as for multiple-family housing units.

(d) In October of 2003, Southern California experienced the most devastating wild land/urban interface fire disaster in history.

(e) According to the California Department of Forestry and Fire Protection, 3,631 homes were destroyed and many of these were situated in the County of San Diego.

(f) Many of these property owners who lost residential homes in the County of San Diego do not have, or are otherwise unable to obtain, adequate insurance to rebuild their lost homes.

(g) This urgency legislation would provide a reasonable litigation procedure pertaining to construction defect litigation that would encourage insurers and licensed contractors to rebuild homes for the families victimized by the Cedar Fire of October of 2003.

SEC. 2. Title 8 (commencing with Section 945.6) is added to Part 2 of Division 2 of the Civil Code, to read:

TITLE 8. PRELITIGATION PROCEDURE:
RECONSTRUCTION OF HOMES LOST IN CEDAR FIRE,
OCTOBER 2003

945.6. For purposes of this title:

(a) "Action" means any civil lawsuit, judicial action, judicial reference, arbitration proceeding, or alternative dispute resolution proceeding.

(b) "Claimant" has the same meaning as that provided in subdivision (f) of Section 895, but does not include the contractor.

(c) "Contractor" includes any subcontractor, design professional, or general contractor who, on or before July 1, 2006, provides his or her services without compensation.

1 945.7. Prior to filing any action on or after January 1, 2006,
2 for claims that seek recovery of damages arising out of, or related
3 to deficiencies in, the residential construction, design,
4 specifications, surveying, planning, supervision, testing,
5 observation of construction, or the design or manufacture of a
6 component part installed in the reconstruction of an individual
7 dwelling unit or common area of residences lost during the
8 October 2003, Cedar Fire in the County of San Diego, a claimant
9 or homeowner shall follow the prelitigation procedure provided
10 in this title.

11 945.8. (a) The claimant shall provide written notice via
12 certified mail, overnight mail, or personal delivery to the
13 responsible contractor, in the manner prescribed in this section,
14 of the claimant's claim that the construction of his or her
15 residence contains a defect. That notice shall provide the
16 claimant's name, address, and preferred method of contact, and
17 shall state that the claimant alleges a defect and shall describe the
18 claim in reasonable detail sufficient to determine the nature and
19 location, to the extent known, of the claimed defect and damages
20 resulting from each defect. In the case of a group of homeowners
21 or an association, the notice shall identify the claimants by
22 address, name, and, if necessary, any other description sufficient
23 to apprise the contractor of the locations of the subject
24 residences, in addition to the defect descriptions and other
25 requirements set forth above. That document shall have the same
26 force and effect as a notice of commencement of a legal
27 proceeding.

28 (b) The notice requirements of this section do not preclude a
29 claimant from seeking redress through any applicable normal
30 customer service procedure, including any binding arbitration,
31 mediation, judicial reference, or other form of alternative dispute
32 resolution, as set forth in any contract, warranty, or any other
33 contractor-generated document. If a claimant seeks redress
34 through any applicable normal customer service procedure, that
35 request does not satisfy the notice requirements of this section.

36 (c) The claimant shall not be deemed to have satisfied the
37 notice requirements of this title unless subdivision (a) is satisfied
38 for each claimed defect and each unit, if there is more than one
39 unit, and no statute of limitations that may be applicable to the
40 claim may be tolled or extended.

1 945.9. A contractor or his or her representative shall
2 acknowledge, in writing, receipt of the notice of the claim within
3 14 days after receipt of that notice. To the extent that provisions
4 of this title are enforced and those provisions are substantially
5 similar to provisions in Section 1375, but an action is
6 subsequently commenced under Section 1375, the parties are
7 excused from performing the substantially similar requirements
8 under Section 1375. If the contractor elects not to follow the
9 prelitigation procedures provided in this title, this title is of no
10 further force or effect and nothing herein applies, or in any way
11 affects, the contractor's or claimant's rights, remedies,
12 obligations, or defenses, contractual or legal.

13 945.10. (a) Within 30 days after service of the notice of claim
14 by the claimant required in Section 945.8, a contractor may send
15 the claimant a written response to the claim or claims, which
16 does either of the following:

17 (1) Offers to settle the claim by monetary payment, the
18 making of repairs, or a combination of both, without inspection.

19 (2) Proposes to inspect the dwelling that is the subject of the
20 claim.

21 (b) If a contractor wholly rejects the claim and will neither
22 remedy the alleged construction defect nor settle the claim, the
23 claimant may bring an action against the contractor for the claims
24 described in the notice of claim without further notice, except as
25 otherwise provided under applicable contract or law.

26 (c) If the claimant rejects the settlement offer made by the
27 contractor, the claimant shall provide written notice of the
28 claimant's rejection to the contractor. The notice shall include the
29 reasons for the claimant's rejection of the contractor's proposal
30 or offer. If the claimant believes that the settlement offer omits
31 reference to any portion of the claim, or was unreasonable in any
32 manner, the claimant shall, in its written notice of rejection,
33 include those items that the claimant believes were omitted and
34 set forth in detail all reasons why the claimant believes the
35 settlement offer is unreasonable.

36 (d) If a proposal for an inspection is made pursuant to
37 paragraph (2) of subdivision (a), the claimant shall, within 60
38 days of receiving the contractor's proposal, provide the
39 contractor and its subcontractors, agents, experts, and consultants
40 prompt and complete access to the dwelling at a mutually

1 convenient date and time to conduct the initial inspection of the
2 dwelling, document any alleged construction defects, and
3 perform any destructive or nondestructive testing required to
4 fully and completely evaluate the nature, extent, and cause of the
5 claimed defects, and the nature and extent of any repairs or
6 replacements that may be necessary to remedy the alleged
7 defects. If destructive testing is required, the contractor shall give
8 the claimant advance notice of those tests and shall, after
9 completion of the testing, return the dwelling to its pretesting
10 condition within 48 hours of completion of the testing. If a
11 contractor deems a second inspection or testing reasonably
12 necessary, the contractor shall provide notice to the claimant
13 within 10 days following the completion of the initial inspection.
14 The contractor may jointly conduct a second inspection or
15 testing. A second inspection or testing shall be completed within
16 40 days of the initial inspection or testing. All requirements
17 concerning the initial inspection or testing shall also apply to the
18 second inspection or testing. If a claim is asserted on behalf of
19 owners of multiple dwellings, or multiple owners of units within
20 a multi-family complex, then the contractor shall be entitled to
21 inspect each of the dwellings or units. All costs of contractor
22 inspection and testing, including any damage caused by the
23 contractor inspection, shall be borne by the contractor. Nothing
24 that occurs during a contractor's or claimant's inspection or
25 testing may be used or introduced as evidence to support a
26 spoliation defense by any potential party in any subsequent
27 litigation.

28 (e) (1) Within 14 days following completion of all of the
29 inspections and testings set forth above, the contractor may send
30 the claimant any of the following:

31 (A) A written offer to fully or partially remedy the
32 construction defect at no cost to the claimant. That offer shall
33 include a description of any additional construction necessary to
34 remedy the defect described in the claim, and an anticipated
35 timetable for the completion of that construction.

36 (B) A written offer to settle the claim by monetary payment.

37 (C) A written offer including a combination of repairs and
38 monetary payment.

39 (D) A written statement that the contractor will not proceed
40 further to remedy the defect.

(2) Any offer shall be accompanied by a statement identifying the particular defect that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the contractor intends to have perform the repair.

(f) If the claimant rejects the offer made by the contractor to remedy the construction defect, or to settle the claim by monetary payment, or a combination of the two, the claimant shall send written notice of the claimant's rejection to the contractor. The notice shall include the specific reasons for the claimant's rejection of the contractor's offer. If the claimant believes the contractor's settlement offer is unreasonable, the claimant shall set forth in detail all reasons why the claimant believes the settlement offer is unreasonable.

(g) Upon receipt of a claimant's rejection and the reasons for that rejection, the contractor may, within 15 days of receiving the rejection, make a supplemental offer of repair or monetary payment to the claimant, or a combination of the two.

(h) If the claimant rejects the supplemental offer made by the contractor to remedy the construction defect, or to settle the claim by monetary payment, or a combination of the two, the claimant shall send written notice of the claimant's rejection to the contractor.

(i) Any claimant accepting the offer of the contractor to remedy a construction defect shall do so by sending the contractor a written notice of acceptance within a reasonable period of time after receipt of the contractor's settlement offer, but no later than 30 days after receipt of the offer. If no response is sent to the contractor within the 30-day period, then the offer shall be deemed accepted.

(j) If a claimant accepts a contractor's offer to repair a construction defect described in a notice of claim, the claimant shall provide the contractor and its subcontractors, agents, experts, and consultants prompt and unfettered access to the dwelling at a mutually convenient date and time, to perform and complete the construction by the timetable stated in the settlement offer. Nothing that occurs during the repair process

1 may be used or introduced as evidence to support a spoliation
2 defense by any potential party in any subsequent litigation.

3 (k) If a claimant accepts a contractor's offer made pursuant to
4 subparagraph (A), (B), or (C) of paragraph (1) of subdivision (e),
5 and the contractor does not proceed to make the monetary
6 payment or remedy the construction defect within the agreed
7 timetable, the claimant may bring an action against the contractor
8 for the claim described in the notice of claim without further
9 notice, except as otherwise provided by applicable contract or
10 law. The contractor's offer and claimant's acceptance shall create
11 a rebuttable presumption that a binding and valid settlement has
12 been reached and should be enforced by the court or arbitrator.

13 (l) If a claimant receives a written statement that the contractor
14 will not proceed further to remedy the defect, the claimant may
15 bring an action against the contractor for the claim described in
16 the notice of claim without further notice, except as otherwise
17 provided by applicable law.

18 (m) After a contractor receives a claimant's initial notice of
19 claim, a claimant and a contractor may, by written mutual
20 agreement, alter the procedure for the notice of claim process
21 described in this section.

22 (n) The contractor or subcontractor who has agreed to a repair
23 or settlement under this title and who has notified his or her
24 insurance carrier according to the terms of his or her insurance
25 policy, shall be deemed, for insurance purposes, to have been
26 legally obligated to make the repairs or the monetary payment, or
27 both, as if the claimant had recovered a judgment against the
28 contractor or subcontractor in the amount of the cost of the
29 repairs or the amount of the monetary payment, or both.

30 945.11. The claimant shall be advised in a reasonable time
31 prior to the inspection as to the identity of all persons or entities
32 invited to attend that inspection.

33 945.12. Nothing in this title is intended to affect existing
34 statutory or decisional law pertaining to the applicability,
35 viability, or enforceability of alternative dispute resolution
36 methods, alternative remedies, contractual arbitration, judicial
37 reference, or similar procedures requiring a binding resolution of
38 a claim or any other disputes between claimants and contractors.
39 Nothing in this title is intended to affect the applicability,
40 viability, or enforceability, if any, of contractual arbitration,

1 judicial reference, or any other form of alternative dispute
2 resolution method after the prelitigation procedure set forth in
3 this title has been completed.

4 945.13. (a) If the applicable statute of limitations would
5 otherwise run during this process, the following apply:

6 (1) If the contractor elects to follow the prelitigation procedure
7 provided in this title, then the time period for filing a complaint
8 or other legal remedies for defect or any provision of this title, or
9 for a claim of inadequate repair, is extended from the time of the
10 notice of the claim pursuant to Section 945.8 by the claimant to
11 100 days after the repair is completed.

12 (2) If the contractor fails to acknowledge the claim within the
13 time specified, or elects not to go through this statutory process,
14 the time period for filing a complaint or other legal remedies for
15 defect of any provision of this title is extended from the time of
16 the notice of the claim by the claimant pursuant to Section 945.8
17 to 30 days after the time for responding to the notice of claim has
18 expired or from receipt of a notice from the contractor electing
19 not to follow the procedure.

20 (b) This section does not toll any applicable statute of
21 limitations if the prelitigation procedure is completed prior to the
22 expiration of the applicable statute of limitations.

23 945.14. The filing of an action does not preclude the use of
24 binding or nonbinding arbitration, judicial reference, or any other
25 form of alternative dispute resolution.

26 945.15. If the claimant fails to act in accordance with the
27 requirements of this title within the timeframes mandated, the
28 contractor may bring a motion to stay any subsequent court
29 action or other proceeding until the requirements of this title have
30 been satisfied. The court, in its discretion, may award the
31 prevailing party on the motion, his or her attorney's fees and
32 costs in bringing or opposing the motion. In the event the
33 claimant fails to comply with subdivision (a) of Section 945.8 for
34 each claimed defect, any statute of limitations applicable to the
35 claim shall not be tolled or extended as it otherwise might be
36 under this title.

37 945.16. Subsequently discovered claims shall be administered
38 separately under this title, unless otherwise agreed to by the
39 parties.

1 945.17. Evidence of both parties' conduct during this process
2 may be introduced during a subsequent action, if any. Any repair
3 efforts undertaken by the contractor may not be considered
4 settlement communications or offers of settlement and are
5 admissible in evidence on that basis.

6 945.18. Nothing in this title may be interpreted to eliminate or
7 abrogate the requirement to comply with Section 411.35 of the
8 Code of Civil Procedure or to affect the liability of design
9 professionals, including architects and architectural firms.

10 SEC. 3. Section 337.17 is added to the Code of Civil
11 Procedure, to read:

12 337.17. (a) Notwithstanding Sections 337.1 and 337.15, for
13 any action regarding the reconstruction of residences lost during
14 the October 2003, Cedar Fire in the County of San Diego, this
15 section shall exclusively govern the limitations period.

16 (b) No action may be brought to recover damages from any
17 person, or the surety of a person, who, on or before July 1, 2006,
18 and without compensation, develops real property or performs or
19 furnishes the design, specifications, surveying, planning,
20 supervision, testing, or observation of construction or
21 construction of an improvement to real property, or the design or
22 manufacture of a component part installed in the improvement to
23 real property more than four years after the substantial
24 completion of the development or improvement for any of the
25 following:

26 (1) Any latent or patent deficiency in the design, specification,
27 surveying, planning, supervision, or observation of construction
28 or construction of an improvement to, or component part or
29 survey of, real property.

30 (2) Injury to property, real or personal, arising out of that
31 deficiency.

32 (3) Injury to the person or for wrongful death arising out of
33 that deficiency.

34 (c) As used in this section, "action" includes an action for
35 indemnity brought against a person arising out of that person's
36 performance or furnishing of services or materials referred to in
37 this section, except that a cross-complaint for indemnity may be
38 filed pursuant to subdivision (b) of Section 428.10 in an action
39 that has been brought within the time period set forth in
40 subdivision (b).

1 (d) Nothing in this section shall be construed as extending the
2 period prescribed by the laws of this state for bringing any
3 action.

4 (e) The limitation prescribed by this section shall not be
5 asserted by way of defense by any person in actual possession or
6 the control, as owner, tenant, or otherwise, of that improvement,
7 at the time any deficiency in the improvement constitutes the
8 proximate cause for which it is proposed to bring an action.

9 (f) This section shall not apply to actions based on willful
10 misconduct or fraudulent concealment.

11 (g) (1) The four-year period specified in subdivision (b) shall
12 commence upon substantial completion of the improvement, but
13 not later than the date of one of the following, whichever first
14 occurs:

15 (A) The date of final inspection by the applicable public
16 agency.

17 (B) The date of recordation of a valid notice of completion.

18 (C) The date of use or occupation of the improvement.

19 (D) One year after termination or cessation of work on the
20 improvement.

21 (2) The date of substantial completion shall relate specifically
22 to the performance or furnishing of the design, specifications,
23 surveying, planning, supervision, testing, observation of
24 construction or construction services by each profession or trade
25 rendering services to the improvement.

26 SEC. 4. Due to the unique circumstances facing the County of
27 San Diego relating to the destructive Cedar Fire of October 2003,
28 the Legislature hereby finds and declares that a general statute
29 cannot be made applicable within the meaning of Section 16 of
30 Article IV of the California Constitution. Therefore, the special
31 legislation contained within Sections 2 and 3 of this act are
32 necessarily applicable only to the County of San Diego.

33 SEC. 5. This act is an urgency statute necessary for the
34 immediate preservation of the public peace, health, or safety
35 within the meaning of Article IV of the Constitution and shall go
36 into immediate effect. The facts constituting the necessity are:

37 This urgency legislation would provide a reasonable litigation
38 procedure pertaining to construction defect litigation that would
39 encourage insurers and licensed contractors to rebuild homes for
40 the families victimized by the Cedar Fire of October of 2003.

O